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1 DONALD MILLER - CROSS  
2 guarding request, item 5 in Mr. Lease's letter  
3 to which you responded was not and never would  
4 be indemnified; isn't that so, yes or no?

5 A. I think this letter speaks for  
6 itself.

7 Q. Yes or no, Mr. Miller?

8 A. It says two things. The answer is  
9 it cannot be answered with a yes or no. This  
10 says two things, one we question whether all of  
11 the items fall within the ambit of the section.  
12 But here is why we can't answer it, if you  
13 notice you're talking about France, not about  
14 the United States. This is a plant in France.

15 We ask you to provide us with  
16 information with respect to what the law is,  
17 what the regulations are in France.

18 It is very difficult for us to  
19 judge whether or not we may owe you something  
20 until we have a complete understanding of  
21 everything that is going on. And we don't know  
22 what the law is in France.

23 Q. When you testified on  
24 direct-examination, Mr. Miller, that machine  
25 guarding was a completely separate matter, it

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1 DONALD MILLER - CROSS  
2 into the facility, look at the machines and you  
3 can see what's there; do you recall that  
4 testimony?

5 A. Talking about United States.

6 Q. If you walked into a facility in  
7 France you couldn't walk around and see what was  
8 there?

9 A. You could.

10 Q. Did you ever ask or direct any of  
11 your personnel to ask to go back and look at any  
12 of the facilities in connection with this  
13 request for indemnity?

14 A. I believe that's what this letter  
15 says.

16 Q. You believe it is a request for you  
17 to go look at the facility?

18 A. No. This is a request for more  
19 information which might have been followed up  
20 with a request --

21 Q. Mr. Miller, did you ever ask to go  
22 back and visit any of the facilities?

23 A. I don't know.

24 Q. Look, you know as you sit there,  
25 you know to your toes that you did not intend to

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1 DONALD MILLER - CROSS  
2 was never covered by the agreement, it was never  
3 the subject of your discussions for the  
4 indemnity, you didn't say but it might be  
5 covered in France; did you?

6 A. There could have been a citation  
7 issued, for instance, with respect to machine  
8 guarding we predated the agreement. That  
9 citation could have had a fine and that fine  
10 would likely have been our liability.

11 Q. Did you hear my question, sir?

12 A. I don't know what the law is in  
13 France and that's why we asked for more  
14 information. So the answer is I can't give you  
15 yes or no.

16 Q. You needed Alcoa to tell you what  
17 the law in France was when you owned that  
18 facility for years before the sale; is that what  
19 your testimony is?

20 A. We needed Alcoa who had possession  
21 of all of our records because we sold Alcoa the  
22 records, to provide us with a relevant files.  
23 That is what this says.

24 Q. You testified about 20 minutes ago  
25 for machine guarding all you need to do is walk

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1 DONALD MILLER - CROSS  
2 indemnify for machine guarding but you didn't  
3 say that in the letter, you said send me more  
4 information; isn't that true?

5 A. No.

6 Q. All right.

7 A. This says --

8 Q. You answered my question. You  
9 answered my question.

10 A. But we would not be --

11 Q. You answered my question.

12 THE ARBITRATOR: Mr. Miller, just  
13 answer his questions, and it will go faster.

14 MR. ZUROFSKY: Is that a promise?

15 A. I'd like that.

16 Q. You do not have any information  
17 about lock out and tag out procedures to know  
18 whether it is covered by the indemnity or not;  
19 isn't that true?

20 A. I testified I didn't know what lock  
21 out or tag out or whatever they are were. So I  
22 guess the answer is I don't have enough  
23 information. It is not a question of having  
24 enough information. I don't even know what they  
25 are. I still don't know.

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Q. Mr. Miller, weren't you asked whether you knew if lock out tag out procedures would be covered by the indemnity, the definition of workplace health and safety in the agreement and you said, I'm sorry, I am not familiar enough with them to tell you?

A. Correct.

Q. You stand by that testimony.

A. I do.

Q. You are also not familiar enough with fall protection to know whether it is covered by the indemnity or not; isn't that so?

A. Is that how I testified in --

Q. Yes.

A. Yes.

Q. You are also not familiar enough with electrical protection of equipment to know whether it is covered by the indemnity or not; isn't that so?

A. Yes. Not my area of life.

Q. Let's look at another excerpt from bulk Exhibit C, your Honor, another one of the letters. This is from bulk Exhibit C, volume 1. For the record, this is a letter

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Q. Excuse me?

A. I believe this relates to an assessment, to an assessment, a survey of whether or not machine guarding is necessary.

Q. Right. Okay. It was your belief then, as it is now, that that was not an indemnifiable expense because the expense related to machine guarding at a U.S. facility which was itself not subject to indemnification; isn't that so?

A. Yes. But Alcoa has taken the position that assessments are subject to indemnification irrespective of whether or not a defect is ultimately found.

Q. You disagree with that?

A. I sure do.

Q. Yet you didn't write back and say you are not covered, you will never be covered, over my dead body will you be covered, you wrote back and said give us some more information about that; didn't you?

A. Absolutely. I think that is the right thing to do was to understand what the claim is. And once you have a full

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dated June 13, 2003 from John Lease to Mr. Hodge. It has a Bates number in the lower right-hand corner FAIR ending in 038. It has Bates numbers on the top which is where it appears in volume 1 of bulk Exhibit C beginning at page 35.

Do you see that this letter from Mr. Lease to Mr. Hodge relates to the Fullerton facility; correct?

A. Yes.

Q. Would you look at the page that has a number at the top 38, top right-hand corner.

A. Yes.

Q. This is the second page of the attached chart to Mr. Lease's letter?

A. Yes.

Q. Fullerton is in the good old U.S.A.; isn't it?

A. Yes.

Q. The first item on this page is request for indemnification for \$58,000 relating to machine guarding; correct?

A. I believe it relates to assessment, but go ahead.

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understanding, provide an answer. And, by the way, we've never gotten more information.

Q. Even though it is a claim you already know you are never going to indemnify; right?

A. I think you need the full story before you give a definitive response. I think that is called being careful in your practice.

Q. Now the next item on that same page relates to the fall control program; right?

A. Yes.

Q. At Fullerton; correct?

A. Correct.

Q. It cites under the regulatory section a number of both Federal and State OSHA provisions; correct?

A. Yes.

Q. As you indicated a few moments ago you don't know enough about fall control to know whether it is covered under the indemnity or not. My question is when you got this letter from Alcoa, with all of these section citations to OSHA, did you look at them?

A. I believe that someone looked at

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1 DONALD MILLER - CROSS  
 2 them, certainly.  
 3 Q. You concluded?  
 4 A. I did not.  
 5 Q. Someone else concluded these were  
 6 not covered?  
 7 A. I don't know what they concluded.  
 8 Q. You haven't paid for them; have  
 9 you?  
 10 A. I don't know. I doubt it.  
 11 Q. Mr. Miller, wait. Let's just  
 12 replay that tape. You are under oath, you are  
 13 the general counsel of the company, do you  
 14 genuinely mean to testify to this court as of  
 15 today you don't know whether your company has  
 16 paid that 58 or \$45,000?  
 17 A. I don't know absolutely, but I  
 18 would doubt it very much. And I think  
 19 consistent with that we asked you to provide us  
 20 with more information so we would learn what  
 21 fall protection was and what you meant by it.  
 22 Q. You didn't know after owning these  
 23 facilities and running them all these years,  
 24 your testimony is Fairchild didn't know what  
 25 fall protection was?

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1 DONALD MILLER - CROSS  
 2 A. I didn't know what fall protection  
 3 was.  
 4 Q. I didn't ask you that. I asked is  
 5 it your testimony that Fairchild did not know  
 6 what fall protection was in connection with a  
 7 facility in the Fasteners business having owned  
 8 and run those facilities at a time when you were  
 9 the general counsel of the company?  
 10 A. I would guess that the people in  
 11 the agreement who are charged with knowledge and  
 12 they are specifically listed, did not know what  
 13 fall protection was. You might take a look at  
 14 that list of people.  
 15 Q. Okay.  
 16 A. Because if I didn't know, they  
 17 didn't know.  
 18 THE ARBITRATOR: Mr. Chesler, when  
 19 you refer to A, you're talking about they are  
 20 authorized to charge against the escrow, is that  
 21 what you're referring to?  
 22 MR. CHESLER: Absolutely correct.  
 23 THE ARBITRATOR: Maybe you can  
 24 tell me, Mr. Miller, in light of all these  
 25 requests, some of them must have been

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1 DONALD MILLER - CROSS  
 2 undisputed, why your company hasn't paid for any  
 3 of them?  
 4 THE WITNESS: Your Honor, we have  
 5 paid for some things. Despite what they say.  
 6 And others we have assumed, we have assumed some  
 7 liabilities. I really am not familiar with the  
 8 detail of which ones we assumed and which ones  
 9 we paid, but we have paid some.  
 10 Q. Mr. Miller, other than in  
 11 connection with assumption of some  
 12 responsibility for litigation, isn't it true  
 13 that Fairchild has not either paid or authorized  
 14 Alcoa to remove from the reserve a dime for any  
 15 one of the matters covered in the Phase Is,  
 16 Phase IIs and subsequent notifications; isn't  
 17 that true?  
 18 A. I don't believe that is true. In  
 19 fact we just paid one for 324,000 Euros, though  
 20 it is a different kind than that.  
 21 Q. So it isn't covered by those  
 22 documents; correct?  
 23 A. One of the ones we just paid. One  
 24 of the ones we just paid on behalf of Alcoa is  
 25 324,000 Euros.

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1 DONALD MILLER - CROSS  
 2 Q. Let's try to be specific. Let's  
 3 look again at this document you have in front of  
 4 you, letter from Mr. Hodge -- to Mr. Hodge.  
 5 A. Yes.  
 6 Q. Isn't it true that Fairchild has  
 7 not paid for a single one of the indemnification  
 8 requests attached to this letter?  
 9 A. I don't know.  
 10 Q. But you don't believe you have; do  
 11 you?  
 12 A. I don't know. You asked me  
 13 specifically did I believe we have paid for fall  
 14 protection. My answer was I don't know and I  
 15 doubt it very much.  
 16 Q. Now --  
 17 A. The same with respect to machine  
 18 guarding.  
 19 Q. You believe it is the same with  
 20 respect to every item in this letter; don't you?  
 21 A. I will have to review each one  
 22 individually.  
 23 I really don't know. But if you  
 24 look at the first one, "plant 2 in the warehouse  
 25 have not filed notice of intent to be covered

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1 DONALD MILLER - CROSS  
2 under California's general storm water permit,  
3 the codes for these facilities require they  
4 obtain permits." We may have done something  
5 about that. But I don't know.

6 Q. Your testimony is you don't know  
7 whether you paid for any of these items;  
8 correct?

9 A. I don't know if any of these items  
10 require payment.

11 Q. That wasn't my question. Obviously  
12 you believe virtually nothing requires payment,  
13 that is why you haven't paid.

14 My question is do you know whether  
15 you have paid for any of these items, yes or no?

16 A. I disagree with your first  
17 characterization. The second one I already  
18 answered it. I don't know.

19 Q. In fact, if I showed you every one  
20 of John Lease's letter for facility after  
21 facility and machine guarding claim and lock out  
22 tag out claim and electrical safety claim, one  
23 after another and asked you the same question,  
24 have you paid for any of these, I take it your  
25 answer would be you have no idea?

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1 DONALD MILLER - CROSS  
2 A. My answer would be we asked for  
3 more information and were not provided it. That  
4 is what my answer would be.

5 Q. That would be a nonresponsive  
6 answer, sir. My question is would you be able to  
7 tell me whether you paid for any of them?

8 A. Do you pay for bills for which you  
9 don't have backup?

10 Q. Unfortunately in this lawsuit I am  
11 the only one that gets to ask you questions.  
12 You don't get to ask me questions.

13 Would you try one more time. Are  
14 you able to tell me whether your company of  
15 which you are general counsel and executive vice  
16 president has paid for any of the  
17 indemnification claims submitted in all of the  
18 Lease letters to Fairchild, do you know?

19 A. I do not know.

20 Q. The truth is you believe strongly  
21 that for virtually all of them, if not all of  
22 them, you haven't paid; isn't that so?

23 A. I do not know whether the claims we  
24 have paid with respect to Fullerton were the  
25 subject of Mr. Lease's letters. But I do know

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1 DONALD MILLER - CROSS  
2 we have paid claims for Fullerton. I believe  
3 they have to do with groundwater, which is  
4 environmental. It is our responsibility.

5 Q. Now you testified on direct this  
6 afternoon that --

7 THE ARBITRATOR: It is four  
8 o'clock. Do you want to break for recess at  
9 this point?

10 MR. CHESLER: Yes, your Honor.

11 THE ARBITRATOR: You just don't  
12 want to stop, you are so wound up here.

13 MR. CHESLER: I am having so much  
14 fun, your Honor. I will stop whenever you want  
15 me to.

16 THE ARBITRATOR: It is up to you.  
17 I thought the court reporter might like a break.  
18 Give counsel a chance to check on that.

19 MR. ZUROFSKY: I will check on  
20 that right now.

21 (Recess taken.)

22 MR. CHESLER: May I proceed, your  
23 Honor.

24 THE ARBITRATOR: Yes.

25 MR. CHESLER: Thank you.

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1 DONALD MILLER - CROSS

2 Q. Mr. Miller, I want to clear up one  
3 or two points about the testimony thus far, then  
4 go on to cover several other topics before you  
5 finish.

6 First of all, you said several  
7 other times you think Fairchild has actually  
8 made some payments to Alcoa. Do you recall that  
9 testimony?

10 A. Has made some payments in  
11 connection with claims made by Alcoa. Yes.

12 Q. Now you understand as you, I  
13 believe, described to the judge in answer to an  
14 earlier question that under the indemnity of  
15 11.6 which we are litigating here, until the  
16 amount of the 8.4 million reserve is covered,  
17 any payments to Alcoa for claims subject to that  
18 provision come out of that reserve before  
19 Fairchild ever writes an actual check to Alcoa;  
20 isn't that right?

21 A. I'd have to review this section,  
22 but there are some liabilities which do not have  
23 the benefit of the reserve for which we are  
24 liable and which are environmental liabilities.

25 Q. Let me try it this way: I am going



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1 DONALD MILLER - CROSS  
 2 to represent to you, and if I'm wrong your  
 3 lawyers will fix it, I will represent to you  
 4 that there have been repeated answers to  
 5 questions at this hearing, all of which have  
 6 said the following: That under the 11.6  
 7 indemnification, I am not talking about any  
 8 other provisions of the agreement, talking about  
 9 11.6 indemnification we are fighting about here,  
 10 the first 8.4 million and change of claims that  
 11 Fairchild allows for indemnity from Alcoa must  
 12 be satisfied by Alcoa out that reserve, it is  
 13 only after that reserve has been exhausted that  
 14 Fairchild would have any obligation to actually  
 15 write a check for a claim that is honored under  
 16 11.6. Do you understand the representation I  
 17 made?  
 18 A. I do understand it.  
 19 Q. Just for this purpose accept this  
 20 representation so we don't get bogged down in  
 21 your having to read the whole agreement again.  
 22 A. Okay.  
 23 Q. Isn't it true, sir, that Fairchild  
 24 has not authorized Alcoa to take any money from  
 25 that \$8.4 million reserve to satisfy any claim

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1 DONALD MILLER - CROSS  
 2 that Alcoa has asserted against Fairchild?  
 3 A. I don't know.  
 4 Q. You don't know as you sit here that  
 5 Fairchild has in fact allowed any claims to be  
 6 paid out of that reserve; do you?  
 7 A. I don't know.  
 8 Q. The 300,000-odd claim you referred  
 9 to just before the break, that wasn't a claim  
 10 Fairchild authorized Alcoa to pay out of the  
 11 reserve; was it not? In fact that was a physical  
 12 check or wire transfer; wasn't it?  
 13 A. Yes.  
 14 Q. So if it is the case, as I have  
 15 represented that all claims under this indemnity  
 16 must first be satisfied out of the \$8.4 million  
 17 reserve before Fairchild must pay any money, if  
 18 that is true, then the \$300,000 or so claim you  
 19 were just talking about before would not be an  
 20 11.6 claim; correct?  
 21 A. If your representation were  
 22 correct. It happens to be false.  
 23 Q. Okay.  
 24 A. Just look at the last sentence of  
 25 11.6A.

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1 DONALD MILLER - CROSS  
 2 Q. If my representation were correct  
 3 then that payment to which you referred would  
 4 not be an 11.6 payment; correct?  
 5 A. I am not talking about fiction,  
 6 this is a book which can be easily read, the  
 7 agreement is very clear that there are some  
 8 claims which are subject to 11.6 indemnification  
 9 which are not, do not get the benefit of the  
 10 deductible.  
 11 Q. Let me try it one more time.  
 12 THE ARBITRATOR: Does Alcoa need  
 13 their specific authorization to charge that?  
 14 MR. CHESLER: Yes, your Honor.  
 15 Q. Let me try one more time, Mr.  
 16 Miller. I take it is your testimony you do not  
 17 know whether Fairchild has paid any claim Alcoa  
 18 has made for indemnification pursuant to 11.6A;  
 19 is that correct?  
 20 A. No.  
 21 Q. That is not correct?  
 22 A. No.  
 23 Q. So your testimony is you know that  
 24 Fairchild has paid claims for indemnification  
 25 under the specific indemnity of 11.6 a?

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1 DONALD MILLER - CROSS  
 2 A. I know that we have paid claims for  
 3 indemnification which have environmental --  
 4 which arose from environmental conditions.  
 5 Q. That is not my question, sir. Let's  
 6 try it again.  
 7 Is it your testimony that Fairchild  
 8 has paid any claims for indemnification that  
 9 Alcoa has made under the specific indemnity  
 10 provision of 11.6A  
 11 A. I don't know is the answer.  
 12 Q. That is what I was trying to  
 13 establish. Thank you. You mentioned before when  
 14 I showed you the fact that Alcoa was asking in  
 15 these various letters for indemnification  
 16 relating to machine guarding and fall control  
 17 and electrical safety, etc. you didn't know one  
 18 way or the other. Well for machine guarding you  
 19 said you did know. But for the others you  
 20 didn't know one way or the other whether they  
 21 were covered, you thought, I think the word you  
 22 used was it was prudent to get the facts before  
 23 you decided on whether to accept the claim or  
 24 reject it; correct?  
 25 A. Correct.

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Q. Now, unless a workplace health or safety request is related to an environmental issue, according to you it is not covered by the indemnity; correct?

A. No, I don't think that is correct.

Q. You do believe that workplace health or safety in paragraph 3.24 in the definition of Environmental Law is only workplace health or safety that is related to environmental issues, water, air, ground; correct?

A. Environmental conditions, yes.

Q. So, if Alcoa makes a request for indemnification that relates to a workplace health or safety issue, such as fall protection, it must, according to you relate to an environmental condition in order for it to be within the definition of Environmental Law which in turn is incorporated into the indemnity; correct?

A. I think that's correct.

Q. So it is your position that fall protection, that is not putting up a railing and thereby causing someone to fall off an elevated

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faster.

So it is your testimony somebody falling off a high ledge could be an environmental safety issue if they slipped on a puddle of water?

A. No. That is not what I testified.

Q. If the water percolated up from the ground and they slipped and fell off a high place, then we would be covered under the indemnity?

A. You might be.

Q. Really?

A. I would have to think about that. Depends whether or not it was a solvent that percolated up through the floor.

Q. When would we be covered by an electrical power problem on the machine?

A. I don't know. I haven't thought of it and I don't understand enough about electrical power problems to give you an answer.

Q. When this letter, I am looking at page 39 of the letter to Mr. Hodge of June 13, 2003 which we looked at before the break, when this letter on page 39 said electrical safety is

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space and hit the ground, can be environmentally related; right?

A. No.

Q. In fact you can't even conjure up a situation where somebody falling off a high ladder or off a high platform is going to be an environmental issue; can you?

A. That is why we asked for more information. If water is percolating up through the floor where it isn't supposed to be and making the floor slippery that might be a situation that might have coverage. But we wouldn't know that unless you gave us the information. And I have to tell you if we didn't ask for the information you would be out there asking me today, you rejected these so fast, you didn't even ask to hear what they were about.

Q. Mr. Miller, I heard you on direct speculating about what my client thought or didn't think. That is probably not a good idea. I can assure you it is a really bad idea to speculate what I am thinking. So let's just stick to my questions, okay. It will go a lot

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not in compliance with regulatory requirements, then cited three specific sections of OSHA, your testimony is you don't know what it was referring to; right?

THE ARBITRATOR: It seems pretty clear, Mr. Chesler, in response to your request which had numerous items, some of which might have been covered, some of which not under their analysis, that they simply responded routinely give us more information. How that relates to the issues before me, I'm not sure. But that seems pretty clear.

MR. CHESLER: Yes, that is pretty clear.

Q. You recall your testimony on direct EHS was not a term you used?

A. Correct.

Q. You also recall you said you went and looked at some directories at Fairchild and concluded that Mr. Miramadi had a different title from environmental health and safety director; correct?

A. In my corporate directory, yes.

Q. Let's be clear. Is it your

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1 DONALD MILLER - CROSS  
 2 testimony, sir, because the title in your  
 3 corporate directory did not say environmental,  
 4 health and safety director, that he in fact did  
 5 not have that title anywhere within the  
 6 Fairchild organization?  
 7 A. I couldn't answer that. I can only  
 8 tell you what my corporate directory said. That  
 9 is how we viewed him at corporate, at the  
 10 corporate office.  
 11 Q. I want to understand what your  
 12 testimony is and isn't. So when Ms. Enriquez in  
 13 Exhibit 244, which we used earlier wrote to the  
 14 Southcoast Air Quality Management District in  
 15 California and she copied Mr. Miramadi on her  
 16 letter to those regulators and identified him as  
 17 U.S. operations environmental health and safety  
 18 director under letterhead of Fairchild Fasteners  
 19 you're not saying that Ms. Enriquez  
 20 misrepresented to the authorities what Mr.  
 21 Miramadi's title is; are you?  
 22 A. I don't know what she did. She may  
 23 have aggrandized his position, he may have asked  
 24 her to do that. What is the date of letter?  
 25 Q. June 14, 2001.

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1 DONALD MILLER - CROSS  
 2 A. Alcoa was already involved with  
 3 Fairchild at that time. I can't tell you why  
 4 she did that or whether or not that was his  
 5 title at Fairchild Fasteners. I am telling you  
 6 what his title was and how we viewed him at the  
 7 corporate office.  
 8 Q. Ms. Enriquez writes this letter to  
 9 the regulators, identifies herself as  
 10 environmental health and safety manager. Is it  
 11 your testimony she misrepresented her title as  
 12 well?  
 13 A. I have to tell you I never heard of  
 14 Ms. Enriquez before this.  
 15 Q. So you don't know whether she was  
 16 lying, you don't know whether she inflated Mr.  
 17 Miramadi's title, but the letter identifies them  
 18 as environmental health and safety director and  
 19 manager; correct?  
 20 A. I don't know that.  
 21 Q. You don't know what the letter  
 22 says?  
 23 A. My testimony was what we viewed him  
 24 as at corporate.  
 25 Q. Okay. Let's go back and look at

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1 DONALD MILLER - CROSS  
 2 the PowerPoint presentation that Fairchild made  
 3 to Alcoa about which you testified earlier.  
 4 MR. ZUROFSKY: The witness may  
 5 need a copy. It was the previous witness.  
 6 MR. CHESLER: Right. It was the  
 7 previous witness. This is Alcoa Exhibit 101,  
 8 your Honor.  
 9 MR. ZUROFSKY: Your Honor, while  
 10 Mr. Chesler is doing that, I just handed counsel  
 11 a set of the unredacted notes. We think that is  
 12 all of them. We are going to double-check. It  
 13 is what we have been able to pull together what  
 14 I just handed him.  
 15 THE ARBITRATOR: All right.  
 16 Q. You were in court when this  
 17 testimony -- this document was the subject of  
 18 prior testimony today; weren't you?  
 19 A. Yes.  
 20 Q. Would you turn please to page 9443.  
 21 A. I would.  
 22 Q. That is headed Fairchild Fasteners  
 23 EHS Management Approach; correct?  
 24 A. Yes.  
 25 Q. It identifies Anthony Miramadi as

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1 DONALD MILLER - CROSS  
 2 director EHS, U.S. operations; correct?  
 3 A. Yes.  
 4 Q. I take it your testimony is in your  
 5 directory he has a different title?  
 6 A. Yes.  
 7 Q. But you don't know whether this was  
 8 an accurate title that was provided to Alcoa in  
 9 September of 2002 or not; is that right?  
 10 A. I don't know if this were an  
 11 accurate title. It is certainly not how we  
 12 viewed him. I can tell you that this chart  
 13 implies he was an incredibly important person  
 14 reporting directly to Olivier Jarrault. I don't  
 15 know that was the case.  
 16 Q. Do you know it wasn't the case?  
 17 A. I can tell you I heard of the top  
 18 five people at Fairchild Fasteners, maybe the  
 19 top ten people and talked to them on some  
 20 regular basis. I also told you that I'd be  
 21 surprised if I talked to Anthony Miramadi twice  
 22 in my life. I would also guess this was  
 23 prepared by Anthony Miramadi.  
 24 Q. Let me try my question again.  
 25 A. I guess I never saw it before.

83 (Pages 2441 to 2444)

Page 2445

1 DONALD MILLER - CROSS  
 2 Q. Excuse me, but look at the first  
 3 page.  
 4 A. I see.  
 5 Q. You forwarded it to Ernesto  
 6 Beckford and others; didn't you?  
 7 A. I did. For them to look at it.  
 8 Q. It is your testimony you don't know  
 9 if you looked at it, you just forwarded it on?  
 10 A. I may well have. I was involved  
 11 with a myriad of issues with Alcoa. All bigger  
 12 than org charts. It is not the kind of thing I  
 13 would have spent any time on whatsoever.  
 14 Q. Let me try it again.  
 15 A. Sure.  
 16 Q. Is it your testimony when Fairchild  
 17 Fasteners told Alcoa that Mr. Miramadi was the  
 18 director of EHS U.S. operations, that that was  
 19 untrue, do you know one way or the other?  
 20 A. I don't know. I only know how we  
 21 viewed him at corporate.  
 22 Q. Based upon looking at your  
 23 directory?  
 24 A. Correct.  
 25 Q. Which hasn't been produced to us.

Page 2446

1 DONALD MILLER - CROSS  
 2 A. You are welcome to see it.  
 3 Q. Thank you. Look at 9447. When  
 4 Fairchild told Alcoa in 2002, looking at the  
 5 bottom of 9447, under Corporate Level EHS Issues  
 6 Management, routine update of EHS issues with  
 7 corporate legal counsel, and the corporate  
 8 claims management team, was that untrue?  
 9 A. I don't know. You'd have to ask  
 10 Michael Hodge. You would have to ask Michael  
 11 Hodge because he is the management team, the  
 12 corporate legal counsel to whom this refers.  
 13 And I assume you did ask him.  
 14 Q. If you look at page 9451 where it  
 15 says under the heading Discussion of Key Ehs  
 16 Initiatives and Issues: Safety. Then among  
 17 other things specifically lists equipment  
 18 modification and replacement, full revolution  
 19 presses and machine guarding, that the  
 20 representation by Fairchild that those were EHS  
 21 issues was untrue; is that your testimony?  
 22 A. I already told you I don't know.  
 23 Nor have I read this document before.  
 24 Q. By the way, there has been  
 25 testimony earlier in this hearing that since

Page 2447

1 DONALD MILLER - CROSS  
 2 last September of 2006 Fairchild has had every  
 3 piece of paper Alcoa has with respect to machine  
 4 guarding and other issues?  
 5 A. Since when?  
 6 Q. Last September. Has Fairchild  
 7 provided any further comments to Alcoa  
 8 concerning its position about indemnification of  
 9 machine guarding claims since last September?  
 10 A. When did we commence this  
 11 arbitration?  
 12 Q. Just answer my question, sir.  
 13 A. I can't answer it until I know when  
 14 we commenced the arbitration.  
 15 Q. Then your answer is you can't  
 16 answer it.  
 17 A. No. Because that would have been a  
 18 response.  
 19 Q. Thank you. You talked about the  
 20 fact that Alcoa sought a price adjustment and  
 21 Mr. Steiner was very unhappy about that and the  
 22 negotiations broke off. Do you recall that  
 23 topic generally?  
 24 A. Yes. It was the second of four  
 25 attempts.

Page 2448

1 DONALD MILLER - CROSS  
 2 Q. In fact in May of 2002 Fairchild  
 3 sought a purchase price adjustment; didn't it?  
 4 A. May of 2002?  
 5 Q. Yes.  
 6 A. You mean an increase in the  
 7 purchase price?  
 8 Q. Yes.  
 9 A. I don't think so.  
 10 Q. Excuse me?  
 11 A. I don't remember that.  
 12 Q. Would you look back at Exhibit,  
 13 Alcoa Exhibit 151 you should have up there. The  
 14 Cahill Gordon letter of May 24, 2002.  
 15 A. What is the tab number?  
 16 Q. It is not in the tab. I handed it  
 17 to you as a separate document.  
 18 A. A Cahill letter.  
 19 Q. May 24, 2002, it is the second  
 20 round of Cahill comments to the agreement that I  
 21 showed you.  
 22 A. What section?  
 23 Q. I am asking you look at the  
 24 cover page.  
 25 A. I have it.



Page 2449

1 DONALD MILLER - CROSS  
 2 Q. Very first paragraph, number 1,  
 3 purchase price.  
 4 A. Yes.  
 5 Q. Your lawyers said to Alcoa in May  
 6 2002 the purchase price must be adjusted to  
 7 reimburse parent for loss of nontaxable  
 8 structure; correct?  
 9 A. That was an open issue all along  
 10 the way. That wasn't something new.  
 11 Q. So the answer to my question is,  
 12 yes, Fairchild sought a purchase price  
 13 adjustment in May 2002?  
 14 A. Fairchild sought, Fairchild had  
 15 always sought this issue. It was not in May of  
 16 2002. This was a continuing open issue. That  
 17 is what that says. It says what we consider to  
 18 be the major open issues. That had been an open  
 19 issue from a long time before.  
 20 Q. Okay. Let's look at Ms. Holloway's  
 21 notes. Which you said you looked at to refresh  
 22 your recollection and she had very nice  
 23 handwriting; do you recall that?  
 24 A. She does. What tab is it, 5 or 6?  
 25 Q. I would like you to look at tab 5.

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1 DONALD MILLER - CROSS  
 2 A. Yes.  
 3 Q. Do you have that?  
 4 A. I do.  
 5 Q. Now I am on the topic of the price  
 6 adjustment issue you testified to on direct.  
 7 A. Yes.  
 8 Q. You have not produced any notes of  
 9 June 11, 2002; have you?  
 10 A. I don't know. I thought we had. I  
 11 don't know.  
 12 Q. Why don't you look. You have got  
 13 the book up there.  
 14 A. No. I have not.  
 15 Q. Now Ms. Holloway, as reflected in  
 16 tab 5, has produced notes from that day; hasn't  
 17 she? They are dated June 11, sir.  
 18 A. Yes.  
 19 Q. Look at the page with Bates number  
 20 ending 92.  
 21 A. Yes.  
 22 Q. Excuse me, 93. You see in the  
 23 middle of that page which is dated June 11 there  
 24 is a heading Price Adjustment; correct?  
 25 A. Yes.

Page 2451

1 DONALD MILLER - CROSS  
 2 Q. It has a series of items underneath  
 3 it beginning with 401(k), then performance, then  
 4 inventory, Workmen's Comp, cash; correct?  
 5 A. Yes.  
 6 Q. And none of the issues listed  
 7 underprice adjustment is an environmental  
 8 indemnity issue; is it, sir?  
 9 A. I don't think you're correct.  
 10 Q. Excuse me?  
 11 A. I don't think you're correct.  
 12 Q. All right. We will do it the hard  
 13 way. First one says "401(k), IT French." Right?  
 14 A. Yes.  
 15 Q. "3.2 times 8 equals 25.6."  
 16 A. Right.  
 17 Q. That is not an environmental  
 18 indemnity issue; is it?  
 19 A. No.  
 20 Q. Next one is "performance, 3 times 8  
 21 equals 24." That you testified, I believe at  
 22 your deposition about which was that there was,  
 23 you said some claim by Alcoa that because your  
 24 business was down, there should be an adjustment  
 25 of the price down; correct?

Page 2452

1 DONALD MILLER - CROSS  
 2 A. I don't know. But I see 3.8, three  
 3 times 8 equals 24.  
 4 Q. Performance does not relate to an  
 5 environmental indemnity issue; does it?  
 6 A. No.  
 7 Q. "Inventory, 15." That doesn't  
 8 relate to an environmental indemnification  
 9 issue; does it?  
 10 A. What is the one on the right of  
 11 that?  
 12 Q. I am asking you about this list,  
 13 Mr. Miller.  
 14 A. No.  
 15 Q. Then "Workmen's Comp 3.5?"  
 16 A. Looking to the right, part of this  
 17 list is what it says on the right.  
 18 Q. Mr. Miller, you really have to try  
 19 to answer my questions. I had a very specific  
 20 question. The question was does inventory of 15  
 21 relate to an environmental indemnity, yes or no?  
 22 Sir?  
 23 A. No.  
 24 Q. Next one, "Workmen's Comp, 3.5."  
 25 Does that relate to an environmental indemnity?

85 (Pages 2449 to 2452)

Page 2453

1 DONALD MILLER - CROSS  
 2 A. No.  
 3 Q. "Cash," does that relate to an  
 4 environmental indemnity?  
 5 A. No.  
 6 Q. And above that section at the very  
 7 top of the page is a separate heading  
 8 Indemnification/Escrow/Contingency; correct?  
 9 A. I don't see that.  
 10 Q. At the very top of the page on the  
 11 second or third line of text, the heading reads  
 12 Indemnification/Escrow/Contingency. Doesn't it?  
 13 A. Uh-huh.  
 14 Q. Under that you see "European tax  
 15 exposure" issue then "environmental" which says  
 16 "1.05 plus," it looks like "8 reserves." Do you  
 17 see that?  
 18 A. Plus reserves.  
 19 Q. Yes, plus some character, I don't  
 20 know what that is in reserves.  
 21 A. Uh-huh.  
 22 Q. Then there are other items; right?  
 23 A. Yes.  
 24 Q. Were you at the meeting on June 11,  
 25 sir?

Page 2454

1 DONALD MILLER - CROSS  
 2 A. Yes.  
 3 Q. But you have no notes; correct?  
 4 A. I think that must be correct. I  
 5 don't recall whether we redacted everything from  
 6 the notes or there were no notes. I think there  
 7 were no notes.  
 8 Q. All right. Have you read or did  
 9 you witness Ms. Holloway's testimony about the  
 10 conversation that took place on June 11 to which  
 11 these notes relate?  
 12 A. No.  
 13 Q. So if her testimony is the price  
 14 reduction that was discussed was not in fact  
 15 related to any environmental indemnification,  
 16 but rather to other issues which are listed on  
 17 this page, then your testimony is that she is  
 18 not telling the truth; correct?  
 19 A. You lost me, I'm sorry.  
 20 Q. If Ms. Holloway's testimony was  
 21 that the price adjustment discussed on June 11,  
 22 2002 did not relate to environmental  
 23 indemnification issues, but instead related to  
 24 such issues as 401(k) and performance and  
 25 inventory, then is it your testimony that she

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1 DONALD MILLER - CROSS  
 2 was not telling the truth?  
 3 A. I have never said that Cynthia has  
 4 been lying. That's crazy.  
 5 Q. I didn't ask that. I am asking you  
 6 as you sit here today to answer the following  
 7 question: If Ms. Holloway has testified under  
 8 oath that the price adjustments discussion on  
 9 June 11, 2002 was not related to environmental  
 10 indemnification, but rather was related to other  
 11 issues, such as the ones I just named, was she  
 12 not telling the truth?  
 13 A. I don't know whether her list is  
 14 comprehensive or not.  
 15 Q. So the answer is you can't answer?  
 16 A. I don't know.  
 17 Q. Correct?  
 18 A. I don't know.  
 19 Q. You don't know. Okay. You  
 20 remember testifying on direct about schedules  
 21 that Fairchild prepared and sent to Alcoa, Mr.  
 22 Miller?  
 23 A. Excuse me, I just realized you're  
 24 talking about notes of a meeting that she had  
 25 with John Flynn and Gene Juris. You are not

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1 DONALD MILLER - CROSS  
 2 talking about the big meeting on 6/11. These  
 3 are her notes of a meeting I never attended.  
 4 Q. I asked you a little while ago if  
 5 you were there. You said yes. Do you want to  
 6 change your testimony you were not there?  
 7 A. I was not at this meeting.  
 8 Q. That may explain why you don't know  
 9 what Ms. Holloway is talking about. Now I want  
 10 to ask you about a different subject.  
 11 A. I don't know if these are her notes  
 12 of her meeting or her notes or her wish list or  
 13 anything else.  
 14 Q. That is already in the record, sir,  
 15 the judge will deal with that.  
 16 A. It is clear I was not at that  
 17 meeting.  
 18 Q. Thank you.  
 19 A. Thank you.  
 20 Q. Different subject.  
 21 A. Or part of that meeting.  
 22 Q. Different subject. Do you recall  
 23 testifying on direct about various schedules  
 24 that Fairchild prepared and sent to Alcoa?  
 25 A. Yes.

Page 2457

1 DONALD MILLER - CROSS  
 2 Q. You agree it was Fairchild that  
 3 prepared those schedules; right?  
 4 A. Fairchild prepared the first draft,  
 5 sent them to Alcoa for review, asked them and  
 6 were directed to send them to Alcoa for review.  
 7 They were reviewed by probably 25 Alcoaans and  
 8 another 20 lawyers for Alcoa.  
 9 Q. Mr. Miller, you may not be hearing  
 10 my question, so I am going to repeat it. My  
 11 question is was it Fairchild that sent those  
 12 schedules to Alcoa? That is a simple question.  
 13 It is worthy of a simple answer. Yes or no?  
 14 A. I am sorry, it is not worthy of a  
 15 simple answer.  
 16 Q. All right, then you have done it?  
 17 A. Because there are multiple drafts.  
 18 Which ones were sent to and which ones were sent  
 19 back, which ones were commented on. To which  
 20 ones are you referring, the very, very first  
 21 draft? Fairchild prepared the very, very first  
 22 draft. That's right. Very first draft. If  
 23 that is your question, that is the answer.  
 24 Q. Mr. Miller, the effect of  
 25 disclosing an item on a schedule was to retain

Page 2458

1 DONALD MILLER - CROSS  
 2 outside of an indemnity the liability with  
 3 Fairchild, that was the purpose of the schedule;  
 4 wasn't it?  
 5 A. Please repeat that.  
 6 Q. Wasn't the purpose of the schedule  
 7 to identify items for which the obligation, the  
 8 liability would remain with Fairchild and be  
 9 carved out of an indemnity?  
 10 A. Look, if a particular schedule  
 11 would have been incomplete, save for the  
 12 identification of a matter, Fairchild would not  
 13 have allowed that matter not to be on the  
 14 schedule.  
 15 MR. CHESLER: Your Honor, can I  
 16 please have a direction to the witness to answer  
 17 the question.  
 18 THE ARBITRATOR: Let's simplify  
 19 it. I think you can answer it. Would you  
 20 repeat the question.  
 21 Q. Yes. If an item was not  
 22 included -- excuse me, if an item was included  
 23 on the schedule, was the purpose of that to take  
 24 that item out from under the indemnity and leave  
 25 the burden or liability with Fairchild; yes or

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1 DONALD MILLER - CROSS  
 2 no?  
 3 A. No. Not necessarily.  
 4 Q. All right.  
 5 A. Now may I answer the question?  
 6 Q. No. You can do that on redirect.  
 7 THE ARBITRATOR: He wants to  
 8 proceed with his questions. Your lawyer can ask  
 9 you all the questions you want. Provided he  
 10 finished by five o'clock.  
 11 MR. ZUROFSKY: I was going to say  
 12 your Honor, not five o'clock. 12 minutes.  
 13 MR. CHESLER: Believe, me your  
 14 Honor, I would like to go a lot faster.  
 15 THE ARBITRATOR: Yes. Go ahead.  
 16 Q. Let's look at 3.14.  
 17 THE ARBITRATOR: What tab? This is  
 18 tab 1.  
 19 A. I think he is looking in the  
 20 agreement.  
 21 Q. Tab 1 in the white binder.  
 22 A. Okay. 3.14.  
 23 Q. 3.14.  
 24 THE ARBITRATOR: This is section  
 25 3.14 of the agreement.

Page 2460

1 DONALD MILLER - CROSS  
 2 MR. CHESLER: Your Honor, give me  
 3 minute. I want to make sure I get to the right  
 4 place.  
 5 THE ARBITRATOR: I think the  
 6 schedules, if you are talking schedules are  
 7 listed under later tabs in this book.  
 8 MR. CHESLER: I found the section  
 9 I want to take the witness to.  
 10 Q. Mr. Miller, go to section 11.2,  
 11 please, on page 2803 which is also page 77.  
 12 A. Section what.  
 13 Q. 11.2 headed Indemnification.  
 14 A. Yes.  
 15 Q. On page 77 which bears Bates  
 16 numbers 2803.  
 17 A. Yes.  
 18 Q. You see under 11.2 A. Are you with  
 19 me, your Honor?  
 20 THE ARBITRATOR: Yes.  
 21 Q. It says "Subject to sections 11.1,  
 22 3, 4 and 5, each of the sellers will jointly and  
 23 severally indemnify" etc., "defend and hold  
 24 harmless," etc., "The transferred --" sorry,  
 25 "the transferred subsidiaries, the buyers' other

87 (Pages 2457 to 2460)

Page 2461

1 DONALD MILLER - CROSS  
 2 affiliates and their respective directors, etc.  
 3 from and against any and all indemnifiable  
 4 losses resulting to, resulting from or arising  
 5 out of" then there is a list of sections; right?  
 6 A. Right.  
 7 Q. Now if you go to iv on the next  
 8 page, which is one of that list.  
 9 A. It says subject to 11.6?  
 10 Q. Yes. It says, "A, subject to 11.6"  
 11 the 11.6 is the environmental indemnity section;  
 12 correct?  
 13 A. Uh-huh.  
 14 Q. That is a yes?  
 15 A. Yes.  
 16 Q. "The Fastener Environmental  
 17 Liabilities and B, all litigation matters  
 18 arising out of or resulting from the conduct of  
 19 the Fasteners business to the Effective Time,  
 20 including the litigation matters set forth on  
 21 section 3.16, in all cases for purposes of both  
 22 clause A and B, to the extent the amount of  
 23 damages thereof exceed the amounts of the  
 24 reserve for environment, health, safety and  
 25 litigation on the closing date balance sheet."

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1 DONALD MILLER - CROSS  
 2 Right?  
 3 A. Yes.  
 4 Q. What was the effect of including a  
 5 matter on Schedule 3.16 in terms of who was  
 6 responsible for the costs associated with it?  
 7 A. It would make the party that  
 8 included the matter liable for the matters which  
 9 were set forth in that schedule to the extent  
 10 they exceeded the reserve.  
 11 Q. Okay. Now go to section 3.14 B.  
 12 A. Yes.  
 13 MR. CHESLER: Your Honor, it is on  
 14 page 36 which bears Bates number 2762.  
 15 Q. You see the 3.14B says "Except as  
 16 set forth on schedule 3.14B, the Fasteners  
 17 business is being and since June 30, 2001 has  
 18 been conducted in material compliance with all  
 19 applicable laws of all government entities  
 20 relating to the operation, conduct or ownership  
 21 of the Fasteners business, provided that no  
 22 representation or warranty is made in this  
 23 section 3.14B with respect to Environmental  
 24 Laws." Correct?  
 25 A. Uh-huh.

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1 DONALD MILLER - CROSS  
 2 Q. Now, it is your position, is it  
 3 not, that this representation about 3.14B does  
 4 not include any environmental matters, as you  
 5 defined the term; correct?  
 6 A. I don't know.  
 7 Q. You don't know one way or the  
 8 other?  
 9 A. I don't know because I need to see  
 10 the schedule.  
 11 Q. All right. If you can't answer,  
 12 you can't answer.  
 13 A. I know one thing --  
 14 Q. You answered the question, Mr.  
 15 Miller. You may know lots of things I am not  
 16 particularly interested in hearing, just confine  
 17 yourself to my questions, please.  
 18 If it had come to your attention,  
 19 sir, while you were the general counsel of  
 20 Fairchild that one of your facilities had  
 21 excessive amounts of potentially toxic  
 22 substances, that is beyond legal limits in the  
 23 waste water flowing out of the facility, would  
 24 you have regarded that something as something  
 25 Fairchild should promptly remedy?

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1 DONALD MILLER - CROSS  
 2 A. I would regard it as something that  
 3 Fairchild should promptly investigate.  
 4 Q. Now, it is true, is it not, that  
 5 back in March of 2003 Alcoa wrote to Fairchild  
 6 and said that St. Cosme, previously your  
 7 facility was not in compliance with regulatory  
 8 requirements for waste water; isn't that true?  
 9 A. I don't know.  
 10 Q. You don't know?  
 11 A. I don't recall.  
 12 Q. All right. Let's look at the March  
 13 4, 2003 document. That is letter from Mr. Lease  
 14 to Mr. Hodge which I gave you as a lose exhibit  
 15 early on in your examination.  
 16 A. I see it.  
 17 Q. You have that?  
 18 A. Yes.  
 19 Q. If you look on the back page, item  
 20 1, it says under Issue Description,  
 21 "non-compliance with waste water permit  
 22 conditions and regulatory requirements for waste  
 23 water discharge and hazardous chemical release  
 24 prevention." Do you see that, sir?  
 25 A. Yes, I do.



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1 DONALD MILLER - CROSS  
 2 Q. Then there are citations to  
 3 regulatory provisions.  
 4 A. Yes.  
 5 Q. Then other information under  
 6 Corrective Actions and Estimated Amounts. Do  
 7 you see all that?  
 8 A. I do.  
 9 Q. And the response that came back was  
 10 one of the we need more information letters;  
 11 correct?  
 12 A. Yes.  
 13 Q. So, in response to that Alcoa sent  
 14 another letter on April 8th, 2003. Do you  
 15 recall that?  
 16 A. I don't.  
 17 Q. Let me show you that document.  
 18 This is from bulk Exhibit C, your Honor as well  
 19 volume 1, beginning on page 19 of that volume.  
 20 If you look at the backside of this document,  
 21 sir, you will see that Alcoa has added a middle  
 22 column, issue and regulatory background; do you  
 23 see that? For the first item there are five  
 24 different entries, the first of which reads "The  
 25 facility waste water discharge is routinely

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1 DONALD MILLER - CROSS  
 2 noncompliant with the numerical limitations for  
 3 several parameters." Then cites what they are.  
 4 "In its operating permit which was issued in  
 5 1986."  
 6 Do you see that?  
 7 A. Uh-huh.  
 8 Q. In response to this letter  
 9 Fairchild sent another letter saying we need  
 10 more information?  
 11 A. Right. You're talking about a  
 12 liability which he estimates at that point is  
 13 about \$4.6 million.  
 14 Q. You asked for more information;  
 15 correct?  
 16 A. All the information he provided is  
 17 contained in these four little boxes? And do you  
 18 think we needed more information?  
 19 MR. CHESLER: Your Honor, may I  
 20 have -- I didn't ask the witness why he refused  
 21 to pay us. I asked if he had refused to pay us.  
 22 MR. ZUROFSKY: That is not what  
 23 you asked him.  
 24 A. No, you didn't. You said and you  
 25 sent back a request for more information.

Page 2467

1 DONALD MILLER - CROSS  
 2 Q. I said did you?  
 3 THE ARBITRATOR: I think he said  
 4 he did; isn't that correct?  
 5 THE WITNESS: Yes, absolutely.  
 6 MR. CHESLER: Before the rest of  
 7 it he did.  
 8 Q. Again, I will tell you there has  
 9 been testimony at this hearing that since last  
 10 fall Fairchild has had all of the paper, every  
 11 piece of paper that Alcoa has with respect to  
 12 this and the other facilities, but particularly  
 13 St. Cosme. As you sit here today, sir, as  
 14 executive vice president and general counsel of  
 15 Fairchild, are you prepared to admit that  
 16 Fairchild should reimburse Alcoa for the costs  
 17 associated with the waste water, excess waste  
 18 water problem at St. Cosme?  
 19 A. No.  
 20 Q. You've heard, I take it, because  
 21 you were in the room for part of the it, that  
 22 Alcoa discovered once it acquired the facility  
 23 that St. Cosme was keeping two sets of books of  
 24 the waste water discharge, one which it showed  
 25 to the regulators and the other which in the

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1 DONALD MILLER - CROSS  
 2 words of the employees, showed the actual  
 3 levels. You have heard about that?  
 4 A. I didn't hear about it in the  
 5 courtroom, but I have heard about that.  
 6 Q. I take it your answer no to my  
 7 prior question that Fairchild is not prepared  
 8 even now to pay for the indemnification is an  
 9 answer you stand by even in light of the  
 10 testimony about two sets of books being kept at  
 11 St. Cosme; correct?  
 12 A. My answer is that this is now  
 13 before the judge. The judge will decide. And  
 14 we will abide by exactly what the judge decides.  
 15 Q. Now, are you aware that while the  
 16 facility at St. Cosme was owned by Fairchild,  
 17 Fairchild obtained a cost estimate for replacing  
 18 the waste water treatment facility?  
 19 A. I am not aware of that.  
 20 Q. Let me show you Exhibit 44. And  
 21 there is an English translation that follows the  
 22 French toward the back. I would like you to  
 23 turn to the page that ends 859, sir. You see  
 24 there is an indicative budget there?  
 25 A. Yes.

89 (Pages 2465 to 2468)

Page 2469

1 DONALD MILLER - CROSS  
 2 Q. By the way, you can see if you  
 3 haven't already looked in the English  
 4 translation at page 855, this is from March 28,  
 5 2001 from Hytec to Fairchild Fasteners. You can  
 6 see in the first sentence of text on that page  
 7 it relates to St. Cosme.  
 8 A. Yes.  
 9 Q. At that time Fairchild owned the  
 10 facility; correct?  
 11 A. Yes.  
 12 Q. Now go back to 859 you see there is  
 13 an estimate from the consultants hired by  
 14 Fairchild.  
 15 A. A million dollars.  
 16 Q. It is actually 880,000 Euros.  
 17 A. A million dollars.  
 18 Q. When you add in the tax it comes to  
 19 a little over a million Euros, which I will  
 20 represent to you in today's dollars is about 1.4  
 21 million.  
 22 A. Okay.  
 23 Q. 1.4 million. Now, if you go back  
 24 to the April 8 letter --  
 25 A. Yes.

Page 2470

1 DONALD MILLER - CROSS  
 2 Q. -- which we just looked at a few  
 3 minutes ago from Mr. Lease to you about St.  
 4 Cosme.  
 5 A. Right.  
 6 Q. If you do the math for the third  
 7 item, you don't even have to do the math, just  
 8 look at it, third item says "the facility waste  
 9 water discharge non-compliant with the numerical  
 10 limitations in the operating permit."  
 11 Then it says "upgrade/replace waste  
 12 water treatment plant." Do you see that item?  
 13 A. Yes.  
 14 Q. The estimate for that is 1.5  
 15 million; correct?  
 16 A. Yes.  
 17 Q. Have you also learned, sir, of  
 18 testimony here at the hearing that the Torrance  
 19 facility while it was owned by Fairchild turned  
 20 up the volume of rinse water in order to dilute  
 21 the discharge of contaminants when the LA County  
 22 inspectors were on the site?  
 23 A. No.  
 24 Q. You haven't been told about that?  
 25 A. No.

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1 DONALD MILLER - CROSS  
 2 Q. I take it that is not something you  
 3 would have countenanced had you known about it;  
 4 would you not?  
 5 A. I would not, of course not.  
 6 Q. In fact if the effect of turning up  
 7 the rinse water to dilute the discharge was to  
 8 make it appear that the discharge was below  
 9 acceptable limits, that is something you would  
 10 want to correct; isn't it?  
 11 A. If the purpose of it was to  
 12 mislead, it absolutely would have been corrected  
 13 had I known about it. If that was the purpose.  
 14 I have no idea. I am not an environmental  
 15 lawyer. I have no idea whether or not it  
 16 happened, and B its purpose. I can tell you if  
 17 the purpose of it was to mislead I would have  
 18 stopped it immediately.  
 19 Q. With respect to St. Cosme, if there  
 20 were in fact two sets of books, and the effect  
 21 of keeping two sets of books was to keep from  
 22 the knowledge of the regulators that the waste  
 23 water discharge was in excess of legal limits,  
 24 and masked the fact that the treatment facility  
 25 had to be replaced, if that hadn't been done,

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1 DONALD MILLER - CROSS  
 2 the need to replace that facility would have  
 3 happened while you owned the plant; wouldn't it?  
 4 A. Again, I don't know. If the  
 5 purpose of keeping a second set of books was to  
 6 mislead as opposed to use a different method of  
 7 calculation or for some other reason with which  
 8 I am not familiar, I would not have allowed it.  
 9 I would have stopped it immediately.  
 10 Q. That wasn't my question, sir. If  
 11 the effect of keeping two sets of books at St.  
 12 Cosme about waste water is to delay the point at  
 13 which the regulators came to know the waste  
 14 water treatment facility was already failing to  
 15 keep the contaminants below required levels,  
 16 then stopping that practice would have notified  
 17 the regulators of the need to replace that  
 18 facility while you owned it; isn't that right?  
 19 A. Not necessarily. It depends when  
 20 the volume of effluents increased, it might have  
 21 been after. However, I already told you, had we  
 22 known about it, had I known about it, I would  
 23 have stopped it.  
 24 Q. Yes. You told me.  
 25 A. And we would have made a full

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1 DONALD MILLER - CROSS  
 2 disclosure on top of it.  
 3 Q. If the regulators had said to you  
 4 what they since said to my client, which is  
 5 that's not properly treating the waste water,  
 6 you must replace the facility, then you would  
 7 have done that; wouldn't you?  
 8 A. If it had been on our watch, we  
 9 would have taken whatever action our consultants  
 10 advised us was necessary to correct the problem.  
 11 Q. But you refused to pay my client  
 12 for taking exactly the same action when it  
 13 happened on their watch; correct?  
 14 A. I don't know whether it is the same  
 15 action.  
 16 Q. Okay.  
 17 A. We asked you for more information.  
 18 Q. How about Temple Avenue, the City  
 19 of Industry. Are you familiar with the fact  
 20 that Fairchild installed a groundwater pump and  
 21 treat system there?  
 22 A. No.  
 23 Q. So you're not therefore familiar  
 24 with the fact you declined to reimburse my  
 25 client for running exactly the same system as

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1 DONALD MILLER - CROSS  
 2 you already installed?  
 3 A. Not familiar with it at all.  
 4 Q. Okay. Give me one moment, your  
 5 Honor?  
 6 MR. CHESLER: I have no further  
 7 questions.  
 8 MR. ZUROFSKY: I will try to be  
 9 brief, your Honor. One of the issues I do think  
 10 we should try to finish Mr. Miller tonight  
 11 because Mr. Chesler is out tomorrow morning.  
 12 MR. CHESLER: Yes.  
 13 MR. ZUROFSKY: I am going to try  
 14 to get through it. I do probably think it is a  
 15 good idea in light of that.  
 16 THE ARBITRATOR: You have other  
 17 witnesses for tomorrow?  
 18 MR. ZUROFSKY: We certainly do.  
 19 THE ARBITRATOR: Mr. Slifkin can  
 20 examine. We will do Mr. Shofstall.  
 21 MR. SLIFKIN: I can do him.  
 22 MR. ZUROFSKY: We will let you  
 23 know the sequence after that tonight after we  
 24 break.  
 25 RE-DIRECT EXAMINATION BY MR. ZUROFSKY: 25

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1 DONALD MILLER - REDIRECT  
 2 Q. Mr. Miller, we heard a lot of  
 3 volume on cross, but I want to get back to the  
 4 facts.  
 5 Let's start with this: Do you  
 6 recall when Mr. Chesler asked you about your  
 7 notes from the June 10 meeting, they are found  
 8 at tab 2?  
 9 A. Yes.  
 10 Q. He asked you about the difference,  
 11 the different entries of number 4, number 5 on  
 12 the second page of tab 2?  
 13 A. Yes.  
 14 Q. Do you recall he asked you with  
 15 respect to number 4?  
 16 A. Yes.  
 17 Q. Which says PCE and TCE. You said  
 18 St. Cosme and Fullerton wants indemnity.  
 19 A. Yes.  
 20 Q. He asked you there is no number  
 21 listed there, no dollar amounts; right?  
 22 A. Not on my notes.  
 23 Q. Not on your notes; right?  
 24 A. Yes.  
 25 Q. You said you should have written it

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1 DONALD MILLER - REDIRECT  
 2 down?  
 3 A. I should have written it down,  
 4 sure. I see it on other people's notes.  
 5 Q. Let's look at some of those notes.  
 6 Turn to tab 6. Do you recognize that  
 7 handwriting?  
 8 A. John Flynn.  
 9 Q. John Flynn?  
 10 A. Uh-huh.  
 11 Q. He was CFO at the time?  
 12 A. Yes. He was at the meeting.  
 13 Q. Do you see there it says 6/10/2002?  
 14 A. I do EPA, indemnity 20 million.  
 15 Q. It doesn't say 20 to 40 does it?  
 16 A. No. It says 20.  
 17 Q. Going back to your notes at tab 2.  
 18 A. Okay.  
 19 Q. They did discuss and give you some  
 20 detail on item 4 PCE and TCE at St. Cosme?  
 21 A. 20 million. I didn't put it down.  
 22 Q. You recall when we looked at  
 23 Ms. Holloway's email her notes those were the  
 24 same references to 20 million?  
 25 A. Yes. Same thing she was talking

91 (Pages 2473 to 2476)

Page 2477

1 DONALD MILLER - REDIRECT  
 2 about.  
 3 Q. Number 5 it says there they will  
 4 give us a list of 20 to 40 million; right?  
 5 A. Yes.  
 6 Q. They did not give you a list?  
 7 A. No, they never did.  
 8 Q. You didn't know what was in those  
 9 items?  
 10 A. I never knew what was in those  
 11 items.  
 12 Q. Mr. Chesler asked you whether or  
 13 not you should have written down the number for  
 14 number 4. But you did write down the words  
 15 "want indemnity" correct?  
 16 A. Correct.  
 17 Q. Is that kind of information you  
 18 want to record in your notes when they ask for  
 19 indemnification?  
 20 A. Yes.  
 21 Q. Look at number 5. Did you write  
 22 want indemnity for number 5?  
 23 A. No. I didn't.  
 24 Q. Do you think you would have written  
 25 down if they were asking for 20 to 40 million

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1 DONALD MILLER - REDIRECT  
 2 indemnity that they wanted it?  
 3 A. Absolutely.  
 4 Q. Let's finish up with the compliance  
 5 issues?  
 6 THE ARBITRATOR: What does that  
 7 mean 20 to 40 million?  
 8 THE WITNESS: They were throwing  
 9 up a bunch of numbers, your Honor.  
 10 MR. CHESLER: I can't hear the  
 11 witness, your Honor.  
 12 THE ARBITRATOR: He needs to hear  
 13 you. My question is what do you understand that  
 14 20 to 40 million that is adjustment of the  
 15 purchase price or what we were they looking for?  
 16 THE WITNESS: They were looking  
 17 for adjustments of the purchase price. They  
 18 were trying to throw up as many liabilities and  
 19 problems they possibly could think of so we  
 20 would be really happy that the purchase price  
 21 was only coming down by 50 million or 60 million  
 22 or 40 million.  
 23 Q. You understood that to be part of  
 24 the negotiation; right, Mr. Miller?  
 25 A. Yes.

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1 DONALD MILLER - REDIRECT  
 2 Q. They never gave you the list?  
 3 A. No.  
 4 Q. Do you believe there is any chance  
 5 Fairchild would have agreed to an indemnity for  
 6 20 to 40 million if it didn't know what items it  
 7 was indemnifying for?  
 8 A. Absolutely not. Steiner walked out  
 9 when we talked about purchase price reduction  
 10 that high. Then you see our modus operandi when  
 11 we ask for indemnification we ask for details so  
 12 we know what it is we are paying for.  
 13 Q. Mr. Chesler took you through  
 14 Ms. Holloway's notes dated 6/11 that had break  
 15 down, you he will recall of some items at tab 4,  
 16 sorry tab 5?  
 17 A. Yes.  
 18 Q. He pointed you to Bates stamp  
 19 number that end in 592. Sorry 593. I think he  
 20 did.  
 21 A. That is a meeting I wasn't at.  
 22 Q. The page 593; right?  
 23 A. Yes.  
 24 Q. Two things. He took you through  
 25 the list on the left-hand side. Was there also

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1 DONALD MILLER - REDIRECT  
 2 discussion as you recall -- you weren't at this  
 3 meeting; right?  
 4 A. I wasn't.  
 5 Q. There is the reference there  
 6 "environmental to close locations." Do you see  
 7 that?  
 8 A. Yes.  
 9 Q. Is that what you were referring to  
 10 when he asked you if there was any reference to  
 11 environmental indemnity?  
 12 A. That is exactly what I was  
 13 referring to.  
 14 Q. This is a list of items listed  
 15 under heading Price Adjustments?  
 16 A. Yes.  
 17 Q. Is it your understanding in  
 18 connection with these meetings on 6/10 and 6/11  
 19 time frame that Alcoa was seeking to lower the  
 20 purchase price absolutely, looking to get a  
 21 better deal?  
 22 A. Yes, absolutely.  
 23 Q. They listed for you a number of  
 24 items; right?  
 25 A. Yes.



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1 DONALD MILLER - REDIRECT  
 2 Q. Including these particular items?  
 3 A. Yes.  
 4 Q. Eventually. And other things?  
 5 A. Later in the day, yes.  
 6 Q. They threw out the compliance?  
 7 A. Right.  
 8 Q. Did Fairchild, as you understand  
 9 it, ask for detail about what the price  
 10 adjustments items were that Alcoa was seeking?  
 11 A. No.  
 12 Q. Was it eventually negotiated?  
 13 A. It was negotiated subsequently. It  
 14 was agreed to be essentially half of what they  
 15 wanted. We split the baby.  
 16 Q. You understood that took care of  
 17 all open issues at the time; right?  
 18 A. Absolutely.  
 19 Q. You never got a list for compliance  
 20 issues?  
 21 A. We never did and never heard about  
 22 it again, and it went away.  
 23 Q. Let's change gears --  
 24 A. I don't know what happened to it.  
 25 Never heard about it again.

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1 DONALD MILLER - REDIRECT  
 2 Q. The idea again to parallel your  
 3 notes about 4 and 5, you said -- strike that.  
 4 Mr. Chesler then took you through  
 5 or I think at the beginning took you through a  
 6 series of drafts. You will recall we had debate  
 7 about whether or not those had been provided  
 8 before and all the rest of it?  
 9 A. Yes.  
 10 Q. He showed you two drafts. I want  
 11 to take you through some of that. They were  
 12 dated in May, do you recall that first one May 6  
 13 and May 24?  
 14 A. Yes.  
 15 Q. When Mr. Chesler was asking you  
 16 some questions he said, well, did your counsel  
 17 look to strike out of the language the term  
 18 workplace health and safety; do you remember  
 19 that?  
 20 A. Yes.  
 21 Q. Let me ask you first and foremost  
 22 on this issue the following: Which is there was  
 23 a lot of drafting back and forth of the language  
 24 of the agreement; correct?  
 25 A. Yes.

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1 DONALD MILLER - REDIRECT  
 2 Q. Comments back and forth?  
 3 A. Yes.  
 4 Q. Including striking some things out,  
 5 grammar changes, moving things around as the  
 6 agreement got formulated?  
 7 A. Yes. By the way, I am not even  
 8 sure it was intended to be stricken. There  
 9 appears to be something else that may have been  
 10 added there. I can't even tell.  
 11 Q. I will take you there those notes  
 12 in a second. I want to ask you a question  
 13 before we get there. That question is this: Do  
 14 you recall any substantive discussion about  
 15 expanding the term of Environmental Law to  
 16 include things like machine guarding?  
 17 A. No.  
 18 Q. Do you believe the changes to this  
 19 section were sort of drafting changes?  
 20 A. Absolutely.  
 21 Q. Let's look at the first one that  
 22 Mr. Chesler showed you which was the May 6.  
 23 A. Yes.  
 24 Q. I believe the page he was looking  
 25 at is page 35.

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1 DONALD MILLER - REDIRECT  
 2 A. They are not numbered.  
 3 Q. Actually 35 doesn't have a number.  
 4 But 34 does.  
 5 A. 34 has a number. 35 doesn't.  
 6 MR. CHESLER: You can't see it is  
 7 under the writing.  
 8 Q. You see 35 there?  
 9 A. I do. I see the page that would  
 10 have been 35.  
 11 Q. You see how there is, if you look  
 12 through this, it combines everything into one,  
 13 there is no breakdown of subsections; right?  
 14 A. Correct.  
 15 Q. No, that A, B, C format we seen in  
 16 the final agreement is not here; correct?  
 17 A. Correct.  
 18 Q. Is this as you understand it an  
 19 attempt by your counsel to just put everything  
 20 in one definition?  
 21 A. Yes.  
 22 Q. It includes, for example, pollution  
 23 and all the stuff we see here; right?  
 24 A. Yes.  
 25 Q. Did you understand that to be a

93 (Pages 2481 to 2484)

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1 DONALD MILLER - REDIRECT  
 2 change striking out the concept of workplace,  
 3 health and safety or just included this in a  
 4 broader?  
 5 A. The latter.  
 6 MR. CHESLER: Your Honor, can we  
 7 have the witness' testimony and not counsel's  
 8 please. Object to the leading.  
 9 MR. ZUROFSKY: Your Honor, I will  
 10 ask for some leniency with respect to these  
 11 drafts considering we did not have a chance.  
 12 THE ARBITRATOR: He answered the  
 13 question. I will allow that. Why don't we  
 14 proceed and try to answer the question.  
 15 MR. ZUROFSKY: Fair enough, your  
 16 Honor. I want to make sure Mr. Miller has  
 17 ability to go through these drafts because he  
 18 had not had the chance beforehand.  
 19 MR. CHESLER: As is often the case  
 20 on cross-examination, your Honor.  
 21 Q. Next thing I want to introduce  
 22 another draft that comes later.  
 23 THE ARBITRATOR: When it gets  
 24 after five o'clock I allow a little more  
 25 leniency.

Page 2486

1 DONALD MILLER - REDIRECT  
 2 MR. ZUROFSKY: I will make sure to  
 3 save it for five o'clock.  
 4 MR. CHESLER: You have been doing  
 5 it all day long.  
 6 MR. ZUROFSKY: You should read  
 7 your transcript with Mr. Lease.  
 8 THE ARBITRATOR: All right,  
 9 gentlemen.  
 10 MR. ZUROFSKY: We are going to  
 11 mark this 500.  
 12 (Claimant's Exhibit 500 was  
 13 marked.)  
 14 MR. CHESLER: Do you have a prefix  
 15 in front of it?  
 16 MR. ZUROFSKY: Claimant's 500.  
 17 Q. Mr. Miller, do you have Claimant's  
 18 500 in front of you?  
 19 A. I do.  
 20 Q. This is Skadden, Arps, Slate,  
 21 Meagher & Flom's draft, let me ask you, Mr.  
 22 Miller see the top SASMF do you know who that  
 23 is?  
 24 A. Yes Skadden, Arps, Slate, Meagher &  
 25 Flom. Skadden, Arps, Slate something.

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1 DONALD MILLER - REDIRECT  
 2 Q. Do you see that?  
 3 A. Yes.  
 4 Q. Page, I guess we excerpted here,  
 5 look on the third page of this exhibit.  
 6 A. I see it.  
 7 Q. Definition of Environmental Law.  
 8 See that?  
 9 A. Yes.  
 10 Q. Right?  
 11 A. Yes.  
 12 Q. You see there is now -- let's take  
 13 a step back. The drafts Mr. Chesler showed you  
 14 were before the June 10 meeting we talked about?  
 15 A. Correct. This is subsequent.  
 16 Q. This is subsequent; correct?  
 17 A. Yes.  
 18 Q. This is after Alcoa has come back  
 19 and asked for that indemnity of 20 million.  
 20 A. Right.  
 21 Q. Environmental Law four subsections;  
 22 right?  
 23 A. Yes.  
 24 Q. Can you read subsection B.  
 25 A. Workplace Health Or Safety.

Page 2488

1 DONALD MILLER - REDIRECT  
 2 Q. That is the same subsection B we  
 3 see in the final agreement a couple weeks later?  
 4 A. Yes.  
 5 Q. If you look at D what does that  
 6 say?  
 7 A. "The health, safety or  
 8 environmental aspects of the presence, handling,  
 9 use, manufacture, distribution, treatment,  
 10 storage, disposal or recycling of exposure to  
 11 hazardous materials."  
 12 Q. That is July 2; right?  
 13 A. Uh-huh.  
 14 Q. Let me hand up 501.  
 15 (Claimant's Exhibit 501 was  
 16 marked.)  
 17 Q. 501. Do you see it there, Mr.  
 18 Miller?  
 19 A. Yes.  
 20 Q. It says "Fairchild comments" on the  
 21 top right?  
 22 A. Yes.  
 23 Q. I want you to turn to --  
 24 A. Right.  
 25 Q. -- third page.

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1 DONALD MILLER - REDIRECT

2 A. Got it.

3 MR. CHESLER: Your Honor, so we  
4 are clear on the record, I want to make sure the  
5 apples and oranges is clear here. The two  
6 documents I used were from Fairchild's counsel.  
7 Which they had. So there was no surprise.  
8 These are theirs which we don't have.

9 MR. ZUROFSKY: Your Honor, in  
10 anticipation of this issue there is an email  
11 dated, which I can introduce as 502 if you like  
12 which someone from our side references the July  
13 3 markup that was sent to Alcoa. Even though  
14 this particular copy that happened to be in our  
15 files doesn't have the cover, it is quite clear  
16 this markup was sent to Alcoa.

17 MR. CHESLER: Assuming there was  
18 only one markup on that date, your Honor. I  
19 have no idea.

20 MR. ZUROFSKY: With that caveat  
21 that's fine. This is a draft with Fairchild's  
22 comments. I can introduce this email if you  
23 want to see it.

24 MR. CHESLER: I stand on my  
25 objection, your Honor. You will just rule on it

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1 DONALD MILLER - REDIRECT

2 replacement pages to our July 31 markup."

3 That suggests it is some excerpt  
4 from a markup. This document is like 100 pages  
5 long. I have no idea what the attachments to  
6 this was. This is not the same thing. We were  
7 showing a Cahill cover letter with the entire  
8 document sent from his law firm. I object.

9 MR. ZUROFSKY: Do you want me to  
10 respond?

11 THE ARBITRATOR: Go ahead.

12 MR. ZUROFSKY: The response is  
13 this: This is an issue we discussed earlier.  
14 The deal was we would not exchange drafts  
15 because we assumed everything was in each  
16 other's files. The only question now is whether  
17 or not there is reason to believe -- they have  
18 no ground to stand on saying it doesn't happen  
19 to be in our files. I don't know what they kept  
20 in their files.

21 The only question that is relevant  
22 whether or not there is reason to believe this  
23 document was sent to them and therefore under  
24 our agreement which you recall Mr. Slifkin got  
25 up and said was his proposal there is reason to

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1 DONALD MILLER - REDIRECT

2 I suppose.

3 THE ARBITRATOR: It is dated that.  
4 Are you having this marked?

5 MR. ZUROFSKY: This is marked as  
6 502.

7 (Claimant's Exhibit 502 was  
8 marked.)

9 MR. ZUROFSKY: It is Joshua  
10 Teitelbaum who I will also represent was my  
11 roommate in law school and is a very trustworthy  
12 guy. He is referring to the July 3 markup sent  
13 to the same people.

14 MR. CHESLER: I don't want to  
15 interrupt your reading, I was just asking for  
16 permission to respond.

17 THE ARBITRATOR: Go ahead.

18 MR. ZUROFSKY: Your Honor, Mr.  
19 Chesler introduced those documents. He said we  
20 have everything in the file. We assume they  
21 have this, too. Obviously that was what the  
22 deal was.

23 MR. CHESLER: I am on a different  
24 point which maybe counsel's roommate understands  
25 but he doesn't. "Enclosed please find 21

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1 DONALD MILLER - REDIRECT

2 believe it is in their files. I am showing Mr.  
3 Teitelbaum's email that says these are  
4 replacement pages.

5 THE ARBITRATOR: I am going to  
6 overrule it. It refers to the comments July  
7 3rd, replacement pages to our July 3rd markup.

8 Q. Mr. Miller, the exhibit I just  
9 handed to you 501, see it there?

10 A. I do. Yes. Environmental Law  
11 page.

12 Q. Turn to Environmental Law, third  
13 page in.

14 A. Yes.

15 Q. These are comments from Fairchild;  
16 right?

17 A. Yes.

18 Q. What does Fairchild suggest in the  
19 definition of Environmental Law to be added?

20 THE ARBITRATOR: Let me see if I  
21 can find the page.

22 MR. ZUROFSKY: Third page in  
23 Exhibit 501, which is July 3rd. Should be third  
24 page in, not including the cover page there is  
25 the definition of Environmental Law about

95 (Pages 2489 to 2492)

Page 2493

1 DONALD MILLER - REDIRECT  
 2 two-thirds down. Do you see it, your Honor?  
 3 THE ARBITRATOR: No. I have it  
 4 the third page including the cover.  
 5 Q. There is that section of  
 6 Environmental Law again?  
 7 A. Is it 501 or 502 you're talking  
 8 about? It is 502.  
 9 Q. 501 is the email. It is the one  
 10 with July 3rd in the upper right. Definition of  
 11 Environmental Law. You see how previously there  
 12 was that four structure, ABCD we looked at the  
 13 day before?  
 14 A. Yes.  
 15 Q. This is Fairchild's comments  
 16 looking to change that to be what does it say?  
 17 A. It says "The environment or natural  
 18 resources including without limitation those  
 19 relating to the clean-up, preservation or  
 20 reclamation thereof." Then it says "any release  
 21 or threatened release of hazardous materials,  
 22 the presence, handle, use, manufacture,  
 23 distribution, treatment, storage, disposal and  
 24 recycling or exposure to hazardous materials or  
 25 B, workplace health and safety."

Page 2494

1 DONALD MILLER - REDIRECT  
 2 Q. Is it Fairchild's comments to  
 3 introduce the B clause, workplace health or  
 4 safety that once again appeared in the final  
 5 draft?  
 6 A. Yes.  
 7 Q. That was a solution -- I will take  
 8 a step back, there was B workplace health and  
 9 safety in the Skadden draft then there was D,  
 10 another reference to health and safety there.  
 11 A. Yes.  
 12 Q. Was it Fairchild's comments to  
 13 combine those two as you read this?  
 14 A. Yes.  
 15 Q. Now at any point in time, Mr.  
 16 Miller, did you authorize your counsel or anyone  
 17 at Fairchild to ever agree to include machine  
 18 guarding to be covered by definition of  
 19 Environmental Law?  
 20 A. Absolutely not. I already  
 21 testified that would have been covered by  
 22 representation.  
 23 THE ARBITRATOR: You answered the  
 24 question.  
 25 Q. Moving topics. I want to clear one

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1 DONALD MILLER - REDIRECT  
 2 thing up because there was significant amount of  
 3 time spent by Mr. Chesler on this idea of  
 4 whether or not you knew items had been paid or  
 5 not been paid. Mr. Miller, do you recall that?  
 6 A. I do.  
 7 Q. Is it your day-to-day job to  
 8 monitor the claims made by Alcoa under the  
 9 agreement?  
 10 A. I receive them. I am listed as a  
 11 signatory -- I mean as the recipient. I pass  
 12 them on to others when I receive them.  
 13 Q. You don't check in every day?  
 14 A. I do not.  
 15 Q. You made reference to payments at  
 16 the Fullerton plant.  
 17 A. Yes.  
 18 Q. What were you talking about?  
 19 A. I know we made some payments with  
 20 respect to environmental matters at Fullerton.  
 21 I don't recall what they were about.  
 22 Q. This is Claimant's 434 previously  
 23 introduced. Do you recognize this document?  
 24 A. A letter from Susan Hall.  
 25 Q. Turn to the second page.

Page 2496

1 DONALD MILLER - REDIRECT  
 2 A. Yes.  
 3 Q. Top of the second page says  
 4 notwithstanding the foregoing?  
 5 A. Fairchild is conditionally prepared  
 6 to undertake the defense of the lawsuit. The  
 7 condition the sites are in fact former Fairchild  
 8 Fasteners facilities. And we have retained a  
 9 law firm to defend the case.  
 10 Q. What do you understand this to be  
 11 the lawsuit about?  
 12 A. This is an agreement to assume a  
 13 particular liability which is an environmental  
 14 liability.  
 15 Q. You're not, when Mr. Chesler asked  
 16 you questions about assuming liabilities was  
 17 this one of the items you were referring to?  
 18 A. Yes.  
 19 Q. You recall he asked you whether  
 20 that is under 11.6 or some other section, do you  
 21 recall that?  
 22 A. I do. I said I don't remember.  
 23 Q. Is the I don't remember the fact  
 24 you just didn't know if this was under 11.6 or  
 25 another?



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DONALD MILLER - REDIRECT

A. Correct.

Q. Let's turn to 11.6A in the agreement: Do you recall some questions about whether or not the reserve had to be attacked first before checks --

A. Yes.

Q. You were making some comments about provided that at the end of section 11.6A

A. Yes.

Q. What were you talking about?

A. "Provided any claims for indemnification related to discontinued ops or preclosing off-site disposal location shall not be subject to any deductible for amounts in the reserve." That was the very point that he was saying I should assume there were no exceptions to 11.6. And here it is. Right before you. There is the exception.

I wondered whether or not that was at 11.6 claim which was not subject to the deductible.

Q. Again, your answers were just based upon you were not sure what category these things fell into?

Page 2499

DONALD MILLER - REDIRECT

Q. Yes, that one. Do you recall

Fairchild received a series of letters about some facilities?

A. Yes.

Q. Mr. Chesler asked you about machine guarding and your response to it.

A. Yes.

Q. Another facility, did you also receive a letter about Torrance?

A. Yes.

Q. And Toulouse?

A. Yes.

Q. They contained similar machine guarding entries?

A. Yes.

Q. So Mr. Chesler asked you whether or not, asked you did you respond by saying not over my dead body, you answered --

A. No.

Q. But you did, let's introduce, this has been previously introduced as 117.

A. It says we don't think we're liable but send us more information.

THE ARBITRATOR: Do you have the

Page 2498

DONALD MILLER - REDIRECT

A. Correct.

Q. There also was significant amount of time spent on this question of the reactions Fairchild responses to machine guarding claims, do you recall that?

A. Yes.

Q. Mr. Chesler showed you some St. Cosme letters and whatnot?

A. Yes.

Q. Let's talk about that. Do you recall receiving a series of these gap analysis letters in beginning of 2003 from Mr. Lease?

A. Not specifically.

Q. Let's look at one of them. The one you have, Mr. Chesler sent you about Fullerton.

A. Yes.

Q. It should be --

A. I got it.

Q. -- on your stack there. I am looking for the exhibit number.

A. I have got it.

Q. Do you recall Fairchild received series of letters --

A. C volume 1 of 22.

Page 2500

DONALD MILLER - REDIRECT

letter for that?

MR. ZUROFSKY: That was for St. Cosme. I won't go through all four, I promise.

Q. Were you attempting in this letter to give a claim by claim by claim analysis of whether or not things --

A. No.

Q. Look at this paragraph in the first instance.

A. Yes. "The letter in table lacks sufficient specificity to satisfy the notice requirements under 11.6."

Q. "In light of the foregoing Fairchild is unable to determine, and in any event disputes." Do you see that?

A. Yes. Whether any of the items listed in the table fall within the ambit of 11.6.

Q. Does that indicate to you in fact you did dispute these things would fall?

A. Yes. Of course.

Q. One other, 503 is January 31, 2005. (Claimant's Exhibit 503 was marked.)

97 (Pages 2497 to 2500)

Page 2501

1 DONALD MILLER - REDIRECT

2 A. Yes.

3 Q. Mr. Miller, do you see there this  
4 is the letter from Ms. Hall?5 A. "Has failed to demonstrate that  
6 the guarding requirement of the the state of  
7 foreign equivalents of Fastener Environmental  
8 Liabilities as defined in the Acquisition  
9 Agreement."10 Q. Is that consistent with your view  
11 the OSHA regulations we are talking about for  
12 machine guarding are not?

13 A. Yes. That is consistent.

14 Q. That that been Fairchild's  
15 consistent response every time we got a machine  
16 guarding claim?17 A. That has always been our response  
18 we are not responsible for machine guarding.19 Q. Mr. Chesler asked you why didn't  
20 you write to Mr. Lease and say over my dead body  
21 you are never going to get paid.22 A. Because that is not the right way  
23 for a lawyer to respond.24 Q. Was this the beginning of the  
25 relationship, right after the acquisition

Page 2503

1 DONALD MILLER - REDIRECT

2 methods, they already paid, they already done  
3 everything. Then they sent us the binders to  
4 tell us how they did it and how much we owed  
5 them.6 Q. Is that one of the reasons you  
7 believe Fairchild has not -- is contesting a  
8 number of the claims in this case?9 A. Yes. They never talked to us.  
10 Never gave us information, we asked for it over  
11 and over again.12 Q. I have a couple more topics, Mr.  
13 Miller. Then I am done. Switch back to  
14 Ms. Holloway's notes on 6/11. You remember the  
15 questions Mr. Chesler asked you about the  
16 reserve?

17 A. Yes.

18 Q. The reserve was related to  
19 environmental items as you defined that term?

20 A. Yes.

21 Q. Look at tab 5.

22 A. Right.

23 Q. Four in, four pages in.

24 A. Yes. It says Barbara and Jeffrey  
25 at the top.

Page 2502

1 DONALD MILLER - REDIRECT

2 between the parties when you first got these  
3 letters, the first gap letters?

4 A. No.

5 Q. I am confusing you, not Ms. Hall's  
6 letters. I am talking about the letters we  
7 talked about earlier.

8 A. Yes.

9 Q. At the beginning of a relationship  
10 do you want to say over my dead body to the  
11 person on the other side?12 A. No. It is looking for trouble. It  
13 is not the correct way to treat your counsel on  
14 the other side.15 Q. How did in fact Alcoa respond to  
16 all these requests for additional information  
17 did they say to you you got enough?

18 A. Never gave us anything.

19 Q. Did they tell you they were going  
20 to give you information?21 A. Absolutely. They said we are going  
22 to give you the information then stalled it.  
23 These binders which he points to, the horse was  
24 already out of the barn by then. They already  
25 done all the remediations, already chosen the

Page 2504

1 DONALD MILLER - REDIRECT

2 Q. Halfway down the page.

3 A. This is the meeting I attended.

4 Q. You believe there are two meetings  
5 on 6/11?6 A. I think she must have had a  
7 preliminary meeting with John Flynn and Gene  
8 Juris.9 Q. So this is the reserve being  
10 discussed?

11 A. Yes.

12 Q. You see there is a reference ENV  
13 and lit reserve?

14 A. Yes.

15 Q. Is that what the reserve was  
16 referred to?

17 A. Yes.

18 Q. There is a reference to EHS over  
19 there as well. Do you recall her mentioning the  
20 term EHS?

21 A. No. Never did.

22 Q. One other thing Mr. Chesler asked  
23 you about was the price reduction.

24 A. Yes.

25 Q. Do you recall that?

Page 2505

1 DONALD MILLER - REDIRECT  
 2 A. Yes.  
 3 Q. He asked you whether or not there  
 4 was any price reduction related to environmental  
 5 indemnification issues. Do you recall that?  
 6 A. Yes.  
 7 Q. Let's clean this up. So Alcoa came  
 8 to you on June 10 and said they anticipate \$20  
 9 million in environmental liabilities; correct?  
 10 A. Correct.  
 11 Q. Then they asked for another 75  
 12 million or so in price reduction?  
 13 A. Yes.  
 14 Q. They also, did they not, identify  
 15 other items they didn't necessarily put in the  
 16 price reduction but things they found in the due  
 17 diligence?  
 18 A. Correct.  
 19 Q. What was Fairchild's response to  
 20 the request -- 75 million was the number; right?  
 21 A. Started at 75. Went down to 66.  
 22 Q. Did Fairchild really care, did it  
 23 care more about how much money was coming off  
 24 the top or what was the items that were going to  
 25 be accounting for that money?

Page 2506

1 DONALD MILLER - REDIRECT  
 2 A. We were interested in how much they  
 3 were going to try to knick us for. Knick is a  
 4 funny word when you are talking about so much  
 5 money. That is what we were interested in.  
 6 Q. They were asking for 75 million;  
 7 right?  
 8 A. Initially 75.  
 9 Q. Eventually you agreed to?  
 10 A. 33.  
 11 Q. After Mr. Steiner made the comments  
 12 about not one chance in a million of 50 to 100?  
 13 A. Correct.  
 14 Q. Now, in addition to the 20 million  
 15 related to the PCE and TCE clean-up there was 20  
 16 to 40 million in compliance issues?  
 17 A. Yes. The deal was over right then  
 18 and there.  
 19 Q. The deal was over right then and  
 20 there?  
 21 A. Right.  
 22 Q. The deal was over in fact when they  
 23 asked for 75 you walked out?  
 24 A. Right.  
 25 Q. That is what is in the Proxy

Page 2507

1 DONALD MILLER - REDIRECT  
 2 Statement about the history of the deal?  
 3 A. Right. It would have been much more  
 4 had the 20 to 40 been in.  
 5 THE ARBITRATOR: When did you  
 6 compromise on the 33?  
 7 THE WITNESS: After we walked out  
 8 of the meeting I took my investment banker  
 9 aside, I would guess Alcoa did the same with  
 10 theirs. I said to him now is when you earn your  
 11 keep.  
 12 Over the next few weeks the  
 13 investment bankers talked, they were interested  
 14 in getting the deal done. They had their own  
 15 reasons for that. They talked. They felt out  
 16 their clients where there might be some give and  
 17 take. They ultimately resolved the issue  
 18 halfway, split it, 33.  
 19 Q. The gross number that was being  
 20 asked for; right?  
 21 A. Correct.  
 22 THE ARBITRATOR: When was the  
 23 number agreed upon approximately?  
 24 THE WITNESS: June 28.  
 25 Q. Is that your recollection?

Page 2508

1 DONALD MILLER - REDIRECT  
 2 THE ARBITRATOR: That is the  
 3 number that went into the document.  
 4 THE WITNESS: If I look in the  
 5 proxy, I can tell you in one second.  
 6 THE ARBITRATOR: That is the  
 7 number that went into the written contract when  
 8 it was finally signed in July?  
 9 THE WITNESS: Yes. Yes.  
 10 Q. Another set of questions Mr.  
 11 Chesler asked you was purposes --  
 12 A. June 28 is correct.  
 13 Q. The purposes of the schedule, do  
 14 you recall that?  
 15 A. Yes.  
 16 Q. Purpose of Schedule 3.24?  
 17 A. Yes.  
 18 Q. You testified on direct-examination  
 19 a little bit about how it works when there is an  
 20 indemnity.  
 21 A. Yes.  
 22 Q. Is it a two step process; how does  
 23 it work?  
 24 A. There has to be a claim, there has  
 25 to be sufficient information. Has to be an

99 (Pages 2505 to 2508)

Page 2509

1 DONALD MILLER - REDIRECT

2 opportunity to cure.

3 Q. I am actually asking, I apologize,  
4 an inartful question. You mentioned before the  
5 term there would be representation then there  
6 would be indemnity?

7 A. Yes. Let me give you an example.  
8 If there is a representation that we are in  
9 compliance with the law, you don't simply omit  
10 and you know you're not, you don't simply omit  
11 that answer that you're not in compliance in the  
12 schedule. You would put it in one way or the  
13 other. It was Mr. Chesler's point if you omit  
14 it, right, then if you omit it, you're  
15 responsible for it. But that isn't the way it  
16 works. You add it into the schedule.

17 Then you add an asterisk on to it  
18 or you cover it in the agreement and say  
19 irrespective of the inclusion of this  
20 representation of this exception on the  
21 schedule, Fairchild is still responsible for  
22 that compliance.

23 To completely leave it off the  
24 schedule would be fraud.

25 Q. Representations you would expect if

Page 2511

1 DONALD MILLER - RECROSS

2 had all this information. Do you recall that?

3 A. Yes.

4 Q. Fairchild filed briefs in this case  
5 stating its position on those claims; right?

6 A. Yes.

7 Q. Let me close with this, Mr. Miller,  
8 has there ever been any doubt in your mind as to  
9 whether or not Fairchild agreed to cover items  
10 like -- totally nonenvironmental items like  
11 machine guarding?

12 A. No. No doubt at all. Those are  
13 environmental sections.

14 MR. ZUROFSKY: Thank you, Mr.  
15 Miller.

16 RE-CROSS-EXAMINATION BY MR. CHESLER:

17 Q. Thank you, your Honor. Mr. Miller,  
18 the notes that Ms. Holloway produced, would you  
19 look at those again, please.

20 A. Yes.

21 Q. Tab 5.

22 A. Yes.

23 THE ARBITRATOR: I take it those  
24 are also her notes at tab 4. Same writing.

25 MR. CHESLER: They are, your Honor

Page 2510

1 DONALD MILLER - REDIRECT

2 you were going to have indemnity of some sort  
3 there be representations in an Acquisition  
4 Agreement related to that topic?

5 A. Absolutely.

6 Q. There were representations in this  
7 agreement related to environmental matters?

8 A. Pages and pages.

9 Q. Related to environmental matters,  
10 too?

11 A. Yes.

12 Q. Section 3.24 we looked at. Any  
13 mention of machine guarding there?

14 A. There is no mention of machine  
15 guarding.

16 Q. Another point --

17 A. It is a big number.

18 THE ARBITRATOR: No question  
19 pending. Proceed counsel, your last question,  
20 would you.

21 MR. ZUROFSKY: I have two  
22 questions, if I can bargain for two.

23 Q. Mr. Chesler -- this one is  
24 a minor one, Mr. Chesler asked you about it  
25 twice, about since September of 2006 Fairchild

Page 2512

1 DONALD MILLER - RECROSS

2 from a different day.

3 THE ARBITRATOR: The prior day.

4 Right.

5 MR. CHESLER: I am interested in  
6 June 11.

7 THE ARBITRATOR: All right.

8 Q. The notes relating to the price  
9 adjustments that I referred you to during  
10 cross-examination appear on page 593; correct?

11 A. Yes.

12 Q. On the immediately preceding page,  
13 592 whose names did Ms. Holloway write at the  
14 top of the page?

15 A. Barbara comments and Jeffrey's  
16 comments.

17 Q. Jeffrey refers to Mr. Steiner.

18 A. Yes.

19 Q. Barbara refers to?

20 A. Barbara Jeremiah.

21 Q. She was from Alcoa; correct?

22 A. Correct.

23 Q. On the immediately preceding page  
24 there is no reference to Mr. Flynn or Mr. Juris;  
25 is there?



Page 2513

Page 2515

DONALD MILLER - RECROSS

A. Correct.

Q. On the immediate following page, 594 she again wrote Barbara and Jeffrey; didn't she?

A. Those are their positions.

Q. Did she write the names Barbara and Jeffrey?

A. Yes.

Q. So they appear on the page right before this one and on the page right after this one; correct?

A. Yes.

Q. I ask you again, sir, if Ms. Holloway has testified under oath that the purchase price adjustment discussed on June 11 did not relate to the environmental indemnification issues, are you testifying that she lied?

A. I believe she was mistaken.

Q. You believe you were not at the meeting to which her notes refer; isn't that correct?

A. I was at the meeting which she refers to the Barbara and Jeffrey.

DONALD MILLER - RECROSS

A. Is that the one given to me by Mr. Zurofsky?

Q. Yes. The one that has the Skadden initials at the top of the first page.

A. Yes.

Q. In that one if you look at the one that has the draft of 2.4G ii in it, that one has one section B with the words workplace health or safety and then a separate proposed section letter D that says the health, safety or environmental aspects and goes on; correct?

A. Yes.

Q. Thank you. With respect to this money that, I should say with respect to the litigation obligation you assumed which is discussed in Exhibit 434, do you have that one, sir, you were just shown that by Mr. Zurofsky?

A. What is it you are looking for?

Q. I am referring to Exhibit 434, Claimant's 34 sticker at the bottom. It is a letter from Susan Hall to John Lease dated June 9, 2005.

A. Yes. I have it.

Q. That is the one that says on the

Page 2514

Page 2516

DONALD MILLER - RECROSS

Q. But you believe you were not at the meeting, the content of which is reflected on page 593; isn't that your testimony?

A. Let's put it this way, I certainly didn't hear all of that. She says John Flynn and Gene Juris were present.

Q. She says that on page 591; correct?

A. Correct.

Q. You didn't hear all of that referring to the contents on 593; correct?

A. Correct.

Q. Thank you. About the drafts these two drafts which your counsel showed you one dated July 2, the other dated July 3. Do you have those?

A. Yes.

Q. Both of them have the words "workplace health or safety" preceded by a letter; correct?

A. Yes. B.

Q. And in fact in the draft marked 500, do you have that one?

A. Which one is that?

Q. 500 is the July 2 draft.

DONALD MILLER - RECROSS

second page "Notwithstanding the foregoing Fairchild is conditionally prepared." Do you have that?

A. Yes.

Q. As you sit here today, sir, you don't know if that is an obligation covered by the indemnity of 11.6A; do you?

A. I think it is one that falls into the exception at the bottom, but I'm not sure.

Q. You're not sure; correct?

A. Correct.

Q. Look at 11.2 A Roman little vii please. It appears on page 78 which corresponds to Bates number 2804?

A. 11.2.

Q. A little vii.

A. I got it. "Any third-party claim arising --"

Q. I didn't ask you to read it into the record.

A. Is that the one?

Q. That is the one.

A. Thank you.

Q. This is in the indemnification

101 (Pages 2513 to 2516)

Page 2517

1 DONALD MILLER - RECROSS  
 2 section I showed you earlier, do you recall we  
 3 talked about this general section earlier 11.2?  
 4 A. Yes.  
 5 Q. You see 11.2 A vii refers to  
 6 indemnification for any third-party claim  
 7 arising from or related to any current or former  
 8 business, etc., it goes on, including  
 9 discontinued operations, etc. etc. Preclosing  
 10 off-site disposal litigations, etc.?  
 11 A. Yes.  
 12 Q. Next question I want you to look at  
 13 503, please, sir. You just looked at that a few  
 14 moments ago your counsel marked it. A letter  
 15 from Susan Hall to John Lease dated July 31,  
 16 2005?  
 17 A. A letter from Susan January 31,  
 18 2005?  
 19 Q. Yes, sir.  
 20 A. I have it.  
 21 Q. That is the letter that begins in  
 22 the second paragraph "First Alcoa has failed to  
 23 demonstrate that the guarding requirements of  
 24 OSHA 1910.212" etc., "Is a Fastener  
 25 Environmental Liability." Right?

Page 2518

1 DONALD MILLER - RECROSS  
 2 A. Correct.  
 3 Q. Now, I want you to look back, I  
 4 showed you a letter that is dated a year and a  
 5 half earlier. It is the January 13, 2003 letter  
 6 from Mr. Lease to Mr. Hodge relating to  
 7 Fullerton. Find that for me, please.  
 8 For the record, your Honor, it is  
 9 the letter that has Bates number 325 in the  
 10 upper right-hand corner bulk Exhibit C volume 1.  
 11 A. I have it.  
 12 Q. Do you have it?  
 13 A. I do.  
 14 Q. Now if you look at the page  
 15 numbered 38 which is in the middle of that chart  
 16 Mr. Lease provided. Do you have page 38?  
 17 A. 38 is the letter.  
 18 Q. 38 in the top right-hand corner,  
 19 sir, bunch of zeros ending 38.  
 20 A. I have it.  
 21 Q. You see that is part of the chart  
 22 attached to Mr. Lease's letter from June 13,  
 23 2003. Do you have it, sir?  
 24 A. Yes.  
 25 Q. The first item is "machine guarding

Page 2519

1 DONALD MILLER - REDIRECT  
 2 does not meet regulatory requirements."  
 3 A. Uh-huh.  
 4 Q. What is the very first section of  
 5 OSHA that was cited way back in June of 2003?  
 6 A. 1910.212.  
 7 Q. The same one which 18 months later  
 8 you informed my client meant that this was not a  
 9 Fastener Environmental Liabilities; right?  
 10 A. Correct.  
 11 MR. CHESLER: I have no further  
 12 questions, your Honor.  
 13 MR. ZUROFSKY: One question.  
 14 THE ARBITRATOR: It is time to go  
 15 home.  
 16 RE-DIRECT EXAMINATION BY MR. ZUROFSKY:  
 17 Q. That last point, prior to  
 18 Ms. Hall's response 18 months later, had you  
 19 sent a letter on Fullerton saying you disputed  
 20 the claim?  
 21 A. Yes.  
 22 MR. ZUROFSKY: That's it.  
 23  
 24 (Time Noted 5:52 p.m.)  
 25

Page 2520

1 DONALD MILLER - REDIRECT  
 2 C E R T I F I C A T E.  
 3  
 4 STATE OF NEW YORK )  
 5 : ss.  
 6 COUNTY OF NEW YORK )  
 7  
 8 I, TAMMEY M. PASTOR, a Registered  
 9 Professional Reporter, Certified LiveNote  
 10 Reporter and Notary Public within and for the  
 11 State of New York, do hereby certify that the  
 12 foregoing proceedings were taken before me on  
 13 February 27, 2007;  
 14 That the within transcript is a true  
 15 record of said proceedings;  
 16 That I am not connected by blood or  
 17 marriage with any of the parties herein nor  
 18 interested directly or indirectly in the matter  
 19 in controversy, nor am I in the employ of the  
 20 counsel.  
 21 IN WITNESS WHEREOF, I have hereunto  
 22 set my hand this \_\_\_\_ day of \_\_\_\_\_,  
 23 2007.  
 24  
 25 TAMMEY M. PASTOR, RPR, CLR